

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GLORIA WARE,

ANSWER

CASE NO.: 06 CIV. 9243

Plaintiff,

JUDGE KARAS

- against -

JURY TRIAL DEMANDED

TOWN OF HAVERSTRAW, CHARLES MILLER, Chief of the Town of Haverstraw Police Department, POLICE OFFICER JOSE M. MARTINEZ, POLICE OFFICER MICHAEL CRUGER, POLICE OFFICER EDWARD DEVOE, POLICE OFFICER GARY LAZAR, SERGEANT PETER MURPHY and LIEUTENANT MARTIN LUND,

Defendants.

=====X

The defendants, TOWN OF HAVERSTRAW, CHARLES MILLER, Chief of the Town of Haverstraw Police Department, POLICE OFFICER JOSE M. MARTINEZ, POLICE OFFICER MICHAEL CRUGER, POLICE OFFICER EDWARD DEVOE, POLICE OFFICER GARY LAZAR, SERGEANT PETER MURPHY and LIEUTENANT MARTIN LUND, by their attorneys, BOEGGEMAN, GEORGE & CORDE, P.C., answering the plaintiff's complaint herein allege:

PRELIMINARY STATEMENT

1. Deny each and every allegation contained in Paragraphs '1' and '2' of the plaintiff's complaint.

JURISDICTION

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in

Paragraphs '3' and '4' of the plaintiff's complaint and refer all questions of law to this Court.

PARTIES

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph '5' of the plaintiff's complaint.

4. Deny each and every allegation contained in Paragraph '8' of the plaintiff's complaint except admits officers, MARTINEZ, CRUGER, DEVOE, LAZAR, MURPHY and LUND, and defendant, MILLER were at all times relevant hereto, employees of the Town of Haverstraw Police Department duly appointed and acting as police officers of the TOWN and were agents, servants and/or employees of defendant, TOWN, acting in the course and scope of their employment and protecting and serving the public.

5. Deny each and every allegation contained in Paragraph '9' of the plaintiff's complaint except admits MILLER, is and was, at all times relevant hereto a employee of Defendant TOWN, acting in the course and scope of his employment and servicing and protecting the public.

6. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph '10' of the plaintiff's complaint and refer all questions of law to this Court.

NOTICE OF CLAIM

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph '11' of the plaintiff's complaint and refer all questions of law to this Court.

FACTUAL ALLEGATIONS

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs '12' and '15' of the plaintiff's complaint.

9. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph '14' of the plaintiff's complaint except admits Leon was being taken down the stairs in handcuffs by several police officers.

10. Deny each and every allegation contained in Paragraphs '13', '16', '17', '18', '19' and '20' of the plaintiff's complaint.

**FIRST COUNT
(42 U.S.C. SECTIONS 1983 and 1983
(AGAINST INDIVIDUAL DEFENDANTS)**

11. Repeat and reiterate with the same force and effect as though fully set forth herein each and every response made heretofore in answer to Paragraphs '1' through '20' in answer to Paragraph '21' of the plaintiff's complaint.

18. Deny each and every allegation contained in Paragraphs '31', '32' and '33' of the plaintiff's complaint.

**FIFTH COUNT
(MUNICIPAL LIABILITY AGAINST
DEFENDANT TOWN 42 U.S.C. SECTION 1983)**

19. Repeat and reiterate with the same force and effect as though fully set forth herein each and every response made heretofore in answer to Paragraphs '1' through '33' in answer to Paragraph '34' of the plaintiff's complaint.

20. Deny each and every allegation contained in Paragraphs '35', '36', '37', '38', '39', '40' and '41' of the plaintiff's complaint.

**AS AND FOR A SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

21. That this court lacks jurisdiction over the person of this answering defendant.

**AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

22. That liability cannot attach against the defendant on the basis that the defendant is protected under the doctrine of absolute immunity.

**AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

23. That liability cannot attach against the defendant on the basis that the defendant is protected under the doctrine of qualified immunity.

**AS AND FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

24. That the defendants' conduct was based on probable cause.

**AS AND FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

25. That the defendants acted in good faith and without malice.

**AS AND FOR A SIXTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

26. That the alleged accident and the damages, if any, alleged to have been sustained by the plaintiff resulting therefrom on the occasion mentioned in the plaintiff's complaint, were wholly or in part caused by the culpable conduct of the plaintiff.

**AS AND FOR A SEVENTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

27. That the plaintiffs have failed to take reasonable measures as to mitigate the damages, if any, alleged in the plaintiff's complaint.

**AS AND FOR AN EIGHTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

28. Criminal and unlawful acts to plaintiff and her son.

**AS AND FOR A NINTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

29. That the plaintiff has failed to state a cause of action against these answering defendants.

**AS AND FOR A TENTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

30. That the plaintiff's claim does not rise to the level of a constitutional violation.

**AS AND FOR ELEVENTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

31. That the plaintiff's suit is frivolous and without merit.

**AS AND FOR TWELFTH, SEPARATE AND COMPLETE DEFENSE
THESE DEFENDANTS, RESPECTFULLY ALLEGE:**

32. That the plaintiff intentionally interfered with the defendants exercise of their police powers and obligations.

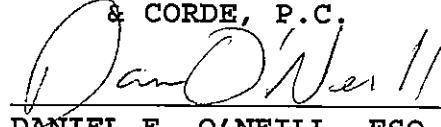
WHEREFORE, defendants, TOWN OF HAVERSTRAW, CHARLES MILLER, Chief of the Town of Haverstraw Police Department, POLICE OFFICER JOSE M. MARTINEZ, POLICE OFFICER MICHAEL CRUGER, POLICE OFFICER EDWARD DEVOE, POLICE OFFICER GARY LAZAR, SERGEANT PETER MURPHY and LIEUTENANT MARTIN LUND, demand judgment dismissing the plaintiff's complaint together with the costs and disbursements of this action.

Dated: White Plains, New York
December 6, 2007

Yours, etc.

BOEGGEMAN, GEORGE

& CORDE, P.C.


DANIEL E. O'NEILL

(1165)

A MEMBER OF THE FIRM
ATTORNEYS FOR THE
DEFENDANTS: TOWN OF
HAVERSTRAW, CHARLES
MILLER, Chief of the Town
of Haverstraw Police
Department, POLICE OFFICER
JOSE M. MARTINEZ, POLICE
OFFICER MICHAEL CRUGER,
POLICE OFFICER EDWARD
DEVOE, POLICE OFFICER
GARY LAZAR, SERGEANT PETER
MURPHY and LIEUTENANT
MARTIN LUND
Address and P.O. Address
1 Water Street
White Plains, N.Y. 10606
(914) 761-2252

TO: MICHAEL SCOLNICK, ESQ.
MICHAEL SCOLNICK, P.C.
ATTORNEYS FOR THE PLAINTIFF
175 Burrows Lane
Blaauvelt, New York 10913
(845) 354-9339

STATE OF NEW YORK)

SS.:

COUNTY OF WESTCHESTER)

ELISABETH M. CRUPI, being duly sworn, deposes and says:

1. I am employed by the law firm of BOEGGEMAN, GEORGE & CORDE, P.C., counsel for the defendants, TOWN OF HAVERSTRAW, CHARLES MILLER, Chief of the Town of Haverstraw Police Department, POLICE OFFICER JOSE M. MARTINEZ, POLICE OFFICER MICHAEL CRUGER, POLICE OFFICER EDWARD DEVOE, POLICE OFFICER GARY LAZAR, SERGEANT PETER MURPHY and LIEUTENANT MARTIN LUND, in the above-entitled action and I am over 18 years of age. I am not a party to this action.

2. On December 10, 2007, I served a true copy of the ANSWER, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York addressed to the last known address of all attorneys to this action, to wit:

TO: MICHAEL SCOLNICK, ESQ.
MICHAEL SCOLNICK, P.C.
ATTORNEYS FOR THE PLAINTIFF
175 Burrows Lane
Blauvelt, New York 10913
(845) 354-9339



ELISABETH M. CRUPI

Sworn to before me this
10TH day of December, 2007



NOTARY PUBLIC

KIMBERLY A. MILLER
Notary Public, State of New York
No. 02M16096699
Qualified in Queens County
Commission Expires 8/4/11